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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PERIDOT TREE WA, INC.,

Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS BOARD and WILLIAM
LUKELA, in his legal capacity as Director
of Washington State Liquor and Cannabis
Board,

Defendants.

NO. 3:23-cv-06111-GJL

[PROPOSED] ORDER DENYING
MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

THIS MATTER is before the Court on Petitioner's Motion for a Temporary Restraining Order Preliminary Injunction (Motion). The Court has considered the Motion, the Declarations of Jeffrey Jensen, and Kenneth Gay in Support of Motion, the Response to Motion, and the Declarations of Rebecca Smith, Nicola Reid and Joshua Bolender in Support of Response to the Motion, the files and records herein, and the Court is fully advised in the matter. After careful consideration the Court is persuaded that Petitioner's Motion must be **DENIED**.

I. DISCUSSION

In 2012, voters in the state of Washington passed Initiative Measure 502 (I-502), decriminalizing marijuana. I-502 is primarily codified in Chapter 69.50 Wash Rev. Code.

1 Statutory requirements for licensure included a 3-month residency at the time of application.
 2 Wash Rev. Code § 69.50.331 (2012). This requirement was later amended in 2015 to a 6-month
 3 requirement. Wash Rev. Code § 69.50.331 (2015).

4 In 2020, the Washington Legislature adopt a Social Equity to help remedy “harms
 5 resulting from the enforcement of cannabis-related laws in disproportionately impacted areas ...”
 6 and “further an equitable cannabis industry by promoting business ownership among individuals
 7 who have resided in areas of high poverty and high enforcement of cannabis-related laws.”
 8 Washington Laws of 2020, chpt. 236, § 1(3).

9 To qualify for the program an applicant must meet two of the following three criteria:

- 10 • Lived in a disproportionately impacted area in Washington for a
 minimum of five years between 1980 and 2010;
- 11 • Been arrested or convicted of a cannabis offense, or had a family
 member arrested or convicted of a cannabis offense;
- 12 • Had a household income in the year prior to submitting an
 application of less than the median household income in
 13 Washington.

14 Wash. Admin. Code. § 314-55-570; Wash. Rev. Code § 69.50.335(2022).

15 Plaintiff is a Washington corporation whose members are not Washington residents.
 16 Plaintiff submitted a Social Equity application in hopes of being allowed to obtain one of eight
 17 available licenses in King County, Washington. Because Peridot Tree WA, Inc. (Peridot) did not
 18 meet the minimum qualifications for the Social Equity Program, the Washington State Liquor
 19 and Cannabis Board withdrew its application on September 17, 2023. Peridot did not submit a
 20 timely appeal. Instead 82 days after receiving the notice that its application was withdrawn, it
 21 filed this action and sought a Temporary Restraining Order and Preliminary Injunction.

22 Plaintiff seeks declaratory judgment to invalidate the residency requirements contained
 23 in Wash. Rev. Code § 69.50.331 and associated rules as well as the scoring criteria for Social
 24 Equity applications because they violate the dormant Commerce Clause, and alleged a
 25 Temporary Restraining Order and Preliminary Injunctions are necessary to prevent the Plaintiff
 26 from being irreparably harmed.

To obtain a temporary restraining order or a preliminary injunction, Plaintiff has the burden to demonstrate that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of the equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20. Alternatively, Petitioner may secure preliminary injunctive relief by raising “serious questions” going to the merits and showing that a balancing of the hardships “tips sharply” in the Petitioner’s favor. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). The Court finds that under either formulation, Petitioner has not met the required factors to be entitled to preliminary injunction.

Specifically, the Court **FINDS** as follows:

A. Likelihood of Merits

The record indicates that there is not a likelihood of Petitioner’s success on the merits.

1. Standing

This Courts finds that Peridot has failed to establish it has suffered an injury in fact that is fairly traceable to Washington’s Residency Requirements. Peridot failed to establish that but for Washington’s Residency Requirements that it would have been selected to proceed with licensing for one of the eight licenses in King County. Without such a showing, Peridot lacks standing and no relief can be granted.

2. Dormant Commerce Clause

The Court concludes, as it did in *Brinkmeyer*, that the requirements of the dormant Commerce Clause are inapplicable to Washington’s residency requirements because it does not apply to federally illegal markets, including Washington’s cannabis market. Therefore, Washington’s residency requirements do not violate it.

Even if this Court were to hold that Washington’s residency requirements and Social Equity requirements were subject to the dormant Commerce Clause, Washington’s residency

1 requirements and Social Equity criteria are narrowly tailored to achieve a legitimate purpose and
2 do not violate the dormant Commerce Clause.

3 **B. Irreparable Harm**

4 The Court further finds that the Plaintiff has not established irreparable harm. Peridot
5 prolonged unexplained delay in bringing this action supports finding that there is no irreparable
6 harm necessitating relief. Further, Peridot harms are purely speculative in nature because it failed
7 to establish but for the residency requirements it would have been chosen to process for a license
8 in King County and ultimately would have received that license. The Plaintiff failed to meet its
9 burden in showing irreparable harm.

10 **C. Balance of Equities**

11 The Court finds that the other applicants who were selected to process for licenses have
12 already invested substantial and significant resources since being notified in September that they
13 had been selected. When these investments are compared to the speculative harm which may be
14 suffered by the Plaintiff, the balance of equities do not favor the Plaintiff.

15 **D. Public Interest**

16 The Court finds that emergency injunctive relief is not in the public interest. The selected
17 applicants would be actually and substantially harmed if the Social Equity Program was
18 enjoined. Further, a conflicting opinion between this matter and *Brinkmeyer* would sow the seeds
19 of discord and create chaos in Washington's marijuana programs. By denying the temporary
20 injunction, the Court recognizes it is preserving a law that has been intact for over eight years.
21 Petitioner fails to show a TRO would be in the public's interest.

22 **II. CONCLUSION**

23 For the above reasons, the Plaintiff failed to meet its burden to show any of the four
24 factors to be entitled to a preliminary injunction.

25 ACCORDINGLY,

26 IT IS HEREBY ORDERED:

1 (1) Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction is
2 DENIED (Dkt. # 6)

3 (2) The hearing on Petition's Motion for Preliminary Injunction noted for January 12,
4 2024 is STRICKEN; and

5 (3) The Clerk is directed to send copies of this Order to counsel for Petitioner, and
6 counsel for Defendant.

7 Dated this _____ day of _____, 2023.

8
9 GRADY J. LEUPOLD
10 UNITED STATES DISTRICT MAGISTRATE JUDGE

11 Presented by:

12 /s/ Jonathan Pitel
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